



# भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित  
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सं. 10] नई दिल्ली, मार्च 5—मार्च 11, 2023, शनिवार/फाल्गुन 14—फाल्गुन 20, 1944  
No. 10] NEW DELHI, MARCH 5—MARCH 11, 2023, SATURDAY/PHALGUNA 14—PHALGUNA 20, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय  
(वित्तीय सेवाएं विभाग)  
नई दिल्ली, 2 मार्च, 2023

**का.आ. 318.**—भारतीय जीवन बीमा निगम श्रेणी III और श्रेणी IV कर्मचारी (सेवा के निबंधन और शर्तों का संशोधन) नियमावली, 1985 के नियम 13 के उप-नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यह निर्धारित करती है कि उक्त उप नियम के अन्य उपबंधों के अध्यधीन, श्रेणी III और श्रेणी IV के प्रत्येक कर्मचारी को निम्नलिखित अवधि के बोनस के बदले में भुगतान, उनके वेतन के 15 प्रतिशत की दर से किया जाएगा:

- 1 अप्रैल, 2018 से 31 मार्च, 2019 की समाप्ति तक; और
- 1 अप्रैल, 2019 से 31 मार्च, 2020 की समाप्ति तक; और
- 1 अप्रैल, 2020 से 31 मार्च, 2021 की समाप्ति तक

[ई फा.सं. एम-16014/02/2022-बीमा-I]

विनोद कुमार, अवर सचिव

**MINISTRY OF FINANCE****(Department of Financial Services)**

New Delhi, the 2nd March, 2023

**S.O. 318.**—In exercise of the powers conferred by sub-rule (2) of rule 13 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985, the Central Government hereby determine that, subject to other provisions of the said sub-rule, the payment in lieu of bonus for the following periods to every Class III and Class IV employee shall be at the rate of 15 percent of his/ her salary:

- i) From 1<sup>st</sup> day of April, 2018 and ending with 31<sup>st</sup> day of March, 2019; and
- ii) From 1<sup>st</sup> day of April, 2019 and ending with 31<sup>st</sup> day of March, 2020; and
- iii) From 1<sup>st</sup> day of April, 2020 and ending with 31<sup>st</sup> day of March, 2021.

[eF. No. M-16014/02/2022-Ins.I]

VINOD KUMAR, Under Secy.

**विदेश मंत्रालय****(सी.पी.वी. प्रभाग)**

नई दिल्ली, 3 मार्च, 2023

**का.आ. 319.**— राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारतीय उच्चायोग, ओटावा में श्रीमती नीतेश चौधरी, सहायक अनुभाग अधिकारी, को मार्च 03, 2023 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/01/2023(09)]

एस.आर.एच. फहमी, निदेशक (कांसुलर)

**MINISTRY OF EXTERNAL AFFAIRS****(CPV DIVISION)**

New Delhi, the 3rd March, 2023

**S.O. 319.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Smt. Nitesh Chaudhary, Assistant Section Officer in the High Commission of India, Ottawa as Assistant Consular Officer to perform Consular services with effect from March 03, 2023.

[F. No. T. 4330/01/2023(09)]

S. R. H FAHMI, Director (Consular)

**पेट्रोलियम और प्राकृतिक गैस मंत्रालय**

नई दिल्ली, 6 मार्च, 2023

**का.आ. 320.**—केंद्र ने सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अधिग्रहण) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में, सरकार की अधिसूचना में निम्नलिखित संशोधन करती है भारत के पेट्रोलियम और प्राकृतिक गैस मंत्रालय में, S.O.67(E) दिनांक 07-01-2021, भारत के राजपत्र में दिनांक 07-01-2021 को प्रकाशित किया गया:-

उक्त अधिसूचना में, “श्री एम. के. रमेश, विशेष भूमि अधिग्रहण अधिकारी, को कर्नाटक सरकार के द्वारा हासन चेरलापल्ली एलपीजी पाइपलाइन (एचसीपीएल) बिछाने के लिए उक्त अधिनियम के तहत कर्नाटक राज्य में सक्षम प्राधिकारी के कार्य करने के लिए M/s हिन्दुस्थान पेट्रोलियम कॉर्पोरेशन लिमिटेड ने नियुक्त किया गया था; अब कर्नाटक सरकार उक्त अधिनियम के तहत M/s हिन्दुस्थान पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा हासन चेरलापल्ली एलपीजी पाइपलाइन (एचसीपीएल) का काम के लिए कर्नाटक राज्य में नए सक्षम प्राधिकारी; श्रीमती मनोहरी को विशेष भूमि अधिग्रहण अधिकारी”, के कार्य करने के लिए प्रतिस्थापित किया जाए।  
यह अधिसूचना जारी होने की तिथि से प्रभावी होगी।

[फा. सं. आर-12030(27)/2/2019-ओ.आर-1/ई-30930]

पी. सोमाकुमार, अवर सचिव

### MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 6th March, 2023

**S.O. 320.**—In pursuance of clause (a) of Section 2 of the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Petroleum and Natural Gas, S.O.67(E) dated 07-01-2021, published in Gazette of India on 07-01-2021 namely:-

In the said notification, for the words “Shri M. K. Ramesh, Special Land Acquisition Officer, Government of Karnataka to perform the functions of Competent Authority in the State of Karnataka under the said Act for laying of Pipelines for Hassan Cherlapalli LPG Pipeline (HCPL) by M/s Hindustan Petroleum Corporation limited” the words “Smt. Manohari, Special Land Acquisition Officer, Government of Karnataka to perform the functions of Competent Authority in the State of Karnataka under the said Act for laying of Pipelines for Hassan Cherlapalli LPG Pipeline (HCPL) by M/s Hindustan Petroleum Corporation limited” shall be substituted.

This notification will be effective from the date of Issue.

[F. No. R-12030(27)/2/2019-OR-I/E-30930]

P. SOMAKUMAR, Under Secy.

### श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 फरवरी, 2023

**का.आ. 321.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 26/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.02.2023 को प्राप्त हुआ था।

[सं. एल-22012/84/2008-आई आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 27th February, 2023

**S.O. 321.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2008) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 22/02/2023

[No. L-22012/84/2008 -IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT AT HYDERABAD**

**Present:** Sri IRFAN QAMAR, Presiding Officer

Dated the 27<sup>th</sup> day of January, 2023

**INDUSTRIAL DISPUTE No. 26/2008****Between:**

The Vice President (Sri K Devaiah)  
Godavari Loya Boggu Gani Karmika Sangam (IFTU)  
Sreerampur Branch  
H.No.D.166, RK-5 Colony P.O., Naspur (M),  
Mancherial Dt., Adilabad -504302.

...Petitioner

**AND**

The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Sreerampur Divn.,  
Sreerampur – 504303.  
Mancherial.

...Respondent

**Appearances:**

For the Petitioner :

M/s. B.G. Ravindera Reddy & Y. Ranjeeth Reddy, Advocates

For the Respondent :

M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

**AWARD**

The Government of India, Ministry of Labour by its order No. L- 22012/ 84/2008-IR(CM-II) dated 10.11.2008 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

**SCHEDULE**

**“Whether the action of the Management of M/s. S.C.C.L in imposing the penalty of reduction of one increment vide Office Order No.SRP/PER/13.008/9036 dated 28.12.2006 in respect of Sri P. Lingaiah is legal and justified? To what relief is the workman concerned entitled?”**

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.26/2008 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows:**

It is submitted that Sri P.Lingaiah was appointed as Badli Filler on 01.04.1986 later he was promoted as General Mazdoor, known as Helper after lapse of four years. Since then he worked continuously without any

complaints, to the entire satisfaction of his superior Officers. While so, he had joined the petitioner Union in the month of January, 2005. He was being harassed on some pretext or the other, there being no fault of him. It is submitted that the petitioner was issued with charge sheet dated 05.05.2005 alleging that he committed theft of company's property. He submitted explanation dated 12.05.2005 denying the charge. Without considering the explanation submitted by the petitioner, an enquiry was conducted in a mechanical manner. The enquiry officer conducted enquiry violating principles of natural justice. Basing on the report submitted by the enquiry officer, the respondent passed order imposing the penalty of stoppage of one increment, questioning which the present industrial dispute was raised. It is further submitted that at the relevant point of time the petitioner was on duty and his duty was to carry the material from the store and to place there in the back yard Bhatli. The petitioner and others were exactly doing their duty. They were asked to shift the material and they were doing the same that cannot be interpreted as theft. The charge itself is false. The petitioner has not committed any misconduct. The penalty order is contrary to the standing orders of the company and contrary to the whole facts of the case. The petitioner has unblemished service record. The enquiry conducted by the management is illegal and invalid. The punishment order passed by the respondent is wholly unjustified and is accordingly liable to be set aside. It is therefore prayed that this Hon'ble Court may be pleased to set aside the office order dated 28.12.2006 and consequently to direct the management to restore the annual increment with all consequential benefits, and pass such other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

### **3. Respondents filed their counter with the averments in brief as follows:**

It is submitted that the workman was given punishment i.e. reversion to lower stage by reducing one increment in the present scale of pay on proved charges of Theft, Fraud etc. after conducting a detailed domestic enquiry duly following the principles of natural justice. It is submitted that the validity of domestic enquiry may be decided as a preliminary issue. In this regard, it is submitted that Sri P. Lingaiah, the Petitioner was appointed in the company as Badli filler on 01-04-1986 and subsequently he was drafted to work as General Mazdoor. The workman was engaged for casting work on 4.5.2005 at Area Work Shop, Srirampur. As raised by the Petitioner there is no eye sore to the Management on the workman. Any employee can enroll his union membership with any Trade union whichever he opts for. The workman was never harassed on any pretext or the other. It is submitted that basing on the written Complaint dated 04.05.2005 given by Sri Rajendera Singh, Inspector/ Exe. Central Industrial Security Force (CISF), Srirampur unit, Charge Sheet bearing No. SRP/AWS/27/2005/777 dated 5.5.2005 was issued to the workman under Company's Standing order No. 25(1) which reads as follows:-

**"25-1 -Theft, fraud or dishonesty in connection with the employee business or property."** The workman was trying to steal brass and copper scrap material along with other workman at Area Workshop, Srirampur. He kept the above said material in a plastic bag and while throwing out of the Compound wall of Area Workshop, Srirampur the workman was caught red handed by the Security Personnel of CISF. The Workman has submitted his explanation dated 12.05.2005 denying charges leveled against him. In this regard to ascertain the facts and to give fair opportunity to the workman, a detailed domestic enquiry was conducted by the Enquiry Officer by ensuring all the principles of natural justice. The enquiry notices were served well in advance as per the procedure of the Company into the alleged mis-conduct. The allegation that the enquiry proceedings were conducted in a mechanical manner without even considering the explanation submitted by the Petitioner and the Enquiry Officer conducted the enquiry in violation of principles of natural justice, are denied. The enquiry officer has conducted the enquiry as per the procedure by ensuring all the principles of natural justice. After completion of enquiry, the Workman was issued a show cause notice dated 2.9.2006 enclosing therewith a copy of the enquiry proceedings and findings of the enquiry officer advising the petitioner to submit his representation, if any, within seven days from the date of receipt of the said notice. The petitioner received the said notice on 27.11.2006 i.e. the Respondent Company has translated the entire enquiry report in Telugu Version and Petitioner submitted his representation dated 02.12.2006, which was examined and found to be not satisfactory. The Disciplinary Authority by taking all the material facts into consideration and the representation submitted by the workman, awarded lesser punishment of reversion to lower stage by reducing one increment in the present scale of pay by order dated 28.12.2006. It is submitted that the workman was on duty on 04.05.2005. As per the written complaint given by Sri Rajender Singh, Inspector/Exe. (CISF), the workman along with other workman was red handedly caught by Sri Siju KK, CISF constable while they were trying to through out the brass / copper scrap material which was readily kept in a plastic bag with an intention to steal the material. The material was seized and the employee has confessed his guilty and also given in writing. The intention of the workman to steal the company material, amounts to mis-conduct under Company's Standing Order. Since the charges leveled against the workman were proved, the penalty imposed is not contrary to the Company's Standing Order. The workman was issued a Show Cause Notice No. SRP/AWS/27/2006/1137, dated 02.09.2006 enclosing therewith a copy of the enquiry proceedings and findings of the enquiry officer therein giving him an opportunity to represent against the same, if any. The workman

submitted his representation dated 02.12.2006. The Disciplinary Authority, by taking all the material facts into consideration and in consideration of the representation submitted by the workman awarded lesser punishment of reversion to lower stage by reducing one increment in the present scale of pay by Order dated 28.12.2006. The workman has submitted an application to Area Workshop, Srirampur requesting to review the imposed penalty i.e. reversion to lower stage by reducing one increment in the present scale of pay. The Respondent Management has given reply vide letter dated 17.02.2007 informing that the restoration of increment deducted as per Company's Standing Orders is not covered under Grievance Procedure Stage. However, he was informed that appeal can be filed under Company's Standing Orders Clause No. 29 to the Appellate Authority i.e. Director (PA&W) within 45 days of the order of Punishment. The workman has submitted an application dated 19.02.2007 to the Appellate Authority and the Appellate Authority has considered the appeal and passed order dated 11.04.2007 confirming the penalty of reversion to lower stage by reducing one increment in the present scale of pay w.e.f. 01.12.2006. The said letter was received by the workman on 18.04.2007. Though there are no extenuating circumstances to award lesser punishment than that of dismissal. A lenient view was taken and awarded reversion to lower stage by reducing one increment in the present scale of pay. In view of the above reasons, the claim of the Petitioner Union be dismissed as devoid of merits.

4. As Petitioner filed memo not pressing the validity of the domestic enquiry, the domestic enquiry is held as legal and valid by order dated 27.11.2018.

5. Both the parties have filed written arguments under Section 11 A of the Act. Perused the record.

6. It is argued by Learned Counsel for the Petitioner that the Enquiry officer without taking into consideration of the facts, submitted his report in casual manner, stating that the charges are proved and the respondent basing on the enquiry report, without considering reply filed by the Petitioner, passed impugned order. It is nothing but unjust, unfair, against principles of natural justice and victimization.

7. On the other hand, the Respondent submitted that the workman was issued charge sheet for misconduct under company's Standing Orders 25(1) which reads as follows: 25(1): "Theft, fraud or dishonesty in connection with the employers business or property". The domestic enquiry was conducted duly giving fair opportunity to the petitioner as per Principles of Natural justice. The petitioner workman participated in the domestic enquiry. The charges leveled against the workman was proved in the domestic enquiry. Though there are no extenuating circumstances to award lesser punishment than that of dismissal, a lenient view was taken and awarded reversion to lower stage by reducing one increment in the present scale of pay. It is submitted by the counsel for the Respondent that the petitioner did not press the validity of domestic enquiry. The Domestic Enquiry is held Valid and Legal by this Tribunal. Punishment imposed being only reversion to lower stage by reducing one increment in the present scale of pay and not dismissal or discharge, the Industrial Tribunal could not have invoked its power under Section 11-A of the Act and the question of invoking power under Section-11A to go into the proportionality of the punishment did not arise. In view of the above, this Hon'ble Tribunal may be pleased to dismiss the claim of the Petitioner Union as devoid of merits.

8. In view of the pleadings of both the parties, the points for determination are:-

I. **Whether the action of management of M/S SCCL, in imposing the penalty of reduction of one increment vide Office Order No. SRP/PER/30/008/9036 dated 20.12.2006 in respect of Sri. P. Lingaiah is legal and justified?**

II. **If yes, what relief is the workman concerned entitled to?**

9. **Point No.I:** The Workman contended that he was appointed as Badli Filler on 01.04.1986. Later on, he was promoted as General Mazdoor known as Helper. He had joined the Petitioner's Union in the month of January 2005, and the same had become an eyesore to the management. For that reason, he was issued with the chargesheet date 05.05.2005 alleging that he committed the theft of the company's property. He submitted the explanation dated 12.05.2005 denying the charge but in a mechanical manner, without even considering the explanation submitted by Petitioner, a farce of inquiry was conducted in violation of the principles of natural justice and fair play. Relying upon the report submitted by the inquiry, the respondent inflicted the penalty of stoppage of one increment. It is also submitted that at relevant point of time, the petitioner was on duty and his duty was to carry the material from the store to place there in the backyard Bathi. It is also submitted that petitioner and others were doing their duty, they were asked to shift the material and they were doing the same and that cannot be interpreted as theft. It is submitted that the Penalty order is contrary to the standing order of the company and contrary to the whole facts of the cases. The punishment order is wholly unjustified and is accordingly liable to be set aside.

10. Perused the record. The workman is not able to point out any illegality in the inquiry proceeding which could be fatal to inquiry. The validity of domestic inquiry has been held valid vide Court Order dated



27.11.2018 as the petitioner himself filed the memo for not pressing the question of validity of the domestic inquiry.

11. From the perusal of the record of domestic inquiry, it delineates that the workman was given full opportunity at every stage of proceedings which he availed and he never raised any objection complaining causing of any prejudice of any nature to him before inquiry officer. Further, it also reveals that he received all the papers/documents filed and relied upon by the respondent in support of charge sheet and he filed a reply, cross-examined the employees, witnesses and examined his witnesses in defence. Moreover, the inquiry officer has appreciated the evidence adduced by both the parties and submitted his reasoned report holding the workman guilty of charge. Therefore, I am of the opinion that no case is made out to hold that the domestic inquiry suffers from any procedural lapse or was conducted in violation of the principles of natural justice, thereby causing any prejudice to the rights of workman. As regards the submission of workman that the penalty order is contrary to the standing order of the company, the respondent would submit that conduct and act of workman of stealing company property from the premises of area workshop while on duty amounts to misconduct under Company's standing order 25(1) which reads as follows:-

**25(1): "Theft, fraud or dishonesty in connection with the Employer's business or property."**

Therefore, in view of the standing order 25(1) of the Company, the workman was found guilty of committing theft of the property of Employer after due inquiry and punishment was inflicted upon him. Hence, the contention of the workman in this regard is not tenable.

12. Now let us see, whether the punishment imposed on the workman of reduction of one increment is legal and justified or the punishment inflicted upon the workman is disproportionate to the gravity of charge. In view of the above discussion, the charge of stealing the property of the Employer against the workman was made and the workman was held guilty in domestic inquiry. The validity of the domestic inquiry has been held legal and valid. As regards the infliction of the punishment of reduction of one increment of the workman. Apex Court in **Coal India Ltd. v. Mukul Kumar Choudhary Civil Appeal No. 5762-5763 of 2009 decided on 24.08.2001**, have held:

*"One of the test to be applied while dealing with the question of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."*

In view of the laws laid down by Apex Court, in the present matter, the workman was found guilty of committing theft of the property of the respondent employer and such charge of theft without doubt is of grave and serious nature which may also attract the penal provision and in the similar nature of conduct of workman, definitely, a reasonable employer is expected to take any stern action/punishment which would fall in the category of major punishment. In the present matter, the respondent employer taking a lenient view in regard to the conduct of the workman, has inflicted the simple punishment of reduction of one increment in the present scale of pay by the impugned order. Hence, in view of the above it cannot be said that the punishment inflicted upon the workman in the present matter is not legal and just or in other words, is disproportionate. Nothing is pointed out in the present matter that the action of reduction of one increment of the workman was done by the respondent for victimization or unfair labour practices.

13. In view of the foregoing discussion, this Court upholds the order of punishment of reduction of one increment of workman and the workman is not entitled for declaration of setting aside the office order dated 28.12.2006 passed by the Respondent.

Thus, Point No. 1 is answered accordingly.

**14. Point No.II:** In view of the findings given in Point No. I, the petitioner workman is not entitled to any relief.

In the result, petition is unfounded and liable to be dismissed. Hence, dismissed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this 27<sup>th</sup> day of January, 2023.

IRFAN QAMAR, Presiding Officer

	Appendix of evidence
Witnesses examined for the	Witnesses examined for the
Petitioner	Respondent
NIL	NIL
	Documents marked for the Petitioner
	NIL
	Documents marked for the Respondent
	NIL

नई दिल्ली, 27 फरवरी, 2023

**का.आ. 322.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 3/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.02.2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आई आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th February, 2023

**S.O. 322.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2009) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 22/02/2023

[No. L-22012/01/2023 -IR (CM-II)]

RAJENDER SINGH, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD

**Present:** Sri IRFAN QAMAR, Presiding Officer

Dated the 31<sup>st</sup> day of January, 2023

#### INDUSTRIAL DISPUTE L.C.No. 3/2009

**Between:**

Sri K. Rajender,  
S/o Rajam,  
R/o C/o S.Venkateshwar Rao,  
Advocate, H.No. 5-11-1193,  
Pochammakunta,  
Hanamkonda -500 009.  
Warangal. .

...Petitioner



AND

The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Bhupalpally. Warangal District.

... Respondent

**Appearances:**

For the Petitioner : M/s. S. Venkateshwar Rao & M. Govind, Advocates  
For the Respondent: M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

**AWARD**

Sri K. Rajender who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding dated 10/20.2.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

**2. The averments made in the petition in brief are as follows:**

The petitioner was appointed as Coal Filler in Respondent's the organization on 12.9.1994 and was posted at VK-7 Incline at Kothagudem and thereafter he was transferred to this unit of Bhupalpalli in April, 2001. Petitioner submits that during his service he has discharged his duties to the utmost satisfaction of one and all of his superiors till he was illegally dismissed from the service by the respondent vide his proceeding dated 10/20.2.2006 which is illegal, unjust, contrary to law and against the principles of natural justice. While he was working at K7 5 Incline as Coal Filler, the Respondent issued the Charge Sheet dated 7.6.2003 alleging unauthorized absenteeism, absence without sufficient cause and without sanctioned leave on the dates mentioned in the charge sheet from 1.1.2002 to 31.12.2002 under the Company's Standing Orders No.25.25 and 25.31 which can be read as under:

*C.S.O.No. 25.25: "Habitual late attendance or habitual absence from duty without sufficient cause.*

*C.S.O.No.25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave."*

The Petitioner has submitted his explanation to the charges explaining the circumstances and his health condition, that kept him absence from his duties which was not taken into account by the Respondent. Petitioner submitted that due to change in work place from Kothagudem to Bhupalpalli, he suffered knee pains and back pain etc., ortho problems, for which he took treatment at company's hospital at Godavrikhani. He has submitted sick certificates also to the Respondent. He could not perform his duties as the work is very hard in nature, under these compelling circumstances only Petitioner was forced to get absented from duty, which is not intentional. As such the misconduct attributed in C.S.O.No.25.25 and 25.31 is not correct. The respondent proceeded with the enquiry duly appointing the enquiry officer into the alleged misconduct wherein the petitioner was denied the principles of natural justice. The enquiry officer did not act independently but acted as a Management representative and he totally recorded the matter in order to suitable to them and simply obtained the signature of the Petitioner. On perusal of the proceedings of the enquiry it is crystal clear that the enquiry conducted by the enquiry officer is stage managed and it is to be vitiated. The findings of the Enquiry Officer are also perverse, one sided and biased. Later he was issued with a show cause notice basing on the findings of the Enquiry Officer. Petitioner submitted his explanation to the show Cause notice. Satisfied with the explanation and medical certificates he was taken into service. But again dismissed from the service on the earlier misconduct or charge sheet vide proceeding dated 10/20.2.2006 which is illegal and liable to be set aside. The punishment of dismissal from service is too harsh and shockingly disproportionate in the instant case. Ever since the date of dismissal from service the petitioner remained unemployed and could not get any alternate employment. The petitioner submits that due to his illegal dismissal from service he along with his family is at the verge of starvation and facing untold economic problems. It is therefore prayed pass an award setting aside the impugned order of dismissal dated 10/ 20.2.2006 passed by the respondent and direct the respondent to reinstate the petitioner into service with continuity of service, full back wages and all other consequential benefits including the attendant benefits.

**3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

The present petition has been filed by the Petitioner who is an unauthorized absentee praying this Tribunal to declare the proceedings No. BHP PER/20-D/630 dated 20.2.2006 issued by the Respondent as illegal, arbitrary and set aside the same. The petitioner by his conduct had accepted the misconduct of unauthorized absenteeism and as can be seen from the records he was dismissed vide Order dated 20.02.2006 and he has chosen to file the present case during June, 2009 i.e. after a lapse of 3 years 5 months. Hence the petition is barred by delay and laches on which ground alone it is liable to be dismissed. It is submitted that the petitioner was dismissed from service on proved charges of absenteeism after conducting a detailed domestic enquiry duly following the principles of natural justice. It is submitted that the Petitioner was not appointed as Coal Filler directly in the Respondent Company but appointed as Badli Filler in the Respondent Company on 12.09.1994 and regularized as Coal Filler w.e.f. 01-03- 2000. The petitioner was issued Charge Sheet No. BHP/KTK.6/A8/884, dated 07.06.2003 for his absence from duty on various dates during the period from 01.01.2002 to 31.12.2002 without any sanctioned leave or sufficient cause under Company's Standing Order Nos. 25.25 And 25.31 which reads as under.

**25.25: "Habitual late attendance or habitual absence from duty without any sufficient cause.**

**25.31: Absence from duty without sanctioned leave or sufficient cause for over staying beyond sanctioned leave."**

The petitioner acknowledged receipt of the charge sheet on 19.06. 2003 and the petitioner has not submitted his explanation for the said charge sheet. As such ordered for domestic enquiry by appointing Enquiry Officer. Accordingly an Enquiry Notice bearing No. BHP/KTK.6/R-10/1461, dated 04.09.2003 was issued advising the Petitioner to appear for the Enquiry. The petitioner has acknowledged the receipt of the notice of enquiry and participated in the enquiry proceedings conducted on 11.09.2003 at 9.00 AM at the office of Colliery Manager, KTK.6 Incline. The Petitioner was given full and fair opportunity to conduct his defence. In his statement during the course of enquiry, the petitioner accepted that he remained absent from duty without getting leave sanctioned and without reporting sick in any Colliery Hospital, on the dates mentioned in the charge sheet. He added that he remained absent as he suffered with health problems since his transfer from Kothagudem. During the year 2002 he suffered with severe back pain which forced him to remain absent for his duties. However, he has not submitted any documentary proof of his averment. He further stated that now his health is improved and wish to work regularly. As per the findings of the Enquiry Officer, the charges leveled against the petitioner were proved. The petitioner was supplied copies of enquiry report and proceedings vide second show cause notice No. BHP/KTK.6/R-17/2066, dated 29.11.2003 advising the petitioner to submit his representation, if any. Though received, petitioner did not submit any representation. The Petitioner has submitted a mercy petition dated 06.10.2005 requesting not to dismiss him and that he will improve his performance. The said application was also considered by the Respondent in order to give him an opportunity to improve himself. His performance was kept under observation for three months after being counseled on 15.10.2005. Even then the Petitioner failed to improve his performance and the following month-wise musters during observation period.

November, 2005                      ... 10 Musters

December, 2005                    ... 08 Musters

January, 2006                      ... 03 Musters

The Petitioner did not keep up his promise and assurance and continued to remain absent for his duties unauthorizedly without leave or permission. The Petitioner was a Coal Filler and should have attended duties more regularly and should have put in a minimum musters of 190 per year. The petitioner had put in the following attendances from the year 1999 to 2005:

Year	Actual Musters
1999	106 days
2000	080 days
2001	023 days
2002	025 days
2003	015 days
2004	005 days
2005(upto Aug)	Nil

It is submitted that the Disciplinary Authority carefully considered all the material on record and as the charges leveled and proved against the petitioner are being grave and serious in nature and there are no extenuating

circumstances to take a lenient view had taken a decision to dismiss the petitioner from Company's service and accordingly the petitioner was dismissed vide Office Order No. BHP/PER/20-D/630 dated 20.02.2006. w.e.f. 20.02.2006. It is submitted that the Respondents' Company employs about 69,895 persons, which includes workmen, executives and supervisors and production results will depend upon the over all attendance and performance of each and every individual. They are inter-linked and inseparable. In this regard, if any one remains absent, without prior leave or without any justified cause, the work to be performed gets affected. Such unauthorized absence creates sudden void, which at time is very difficult to fill-up, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. That is the reason why the Respondents' Company is compelled to take severe action against the unauthorized absentees. In the instant case, the Petitioner is one such unauthorized absentee Petitioner was issued charge sheet for absenteeism during the year 2002 and charges were proved against him. As such, the Respondent was constrained to dismiss the Petitioner for unauthorized absenteeism w.e.f. 20.02.2006 vide Office Order No. BHP/PERVZO- D/630, dated: 20.02.2006. In view of above, it is prayed that this Tribunal may be pleased to dismiss the claim petition as devoid of merits.

4. The perusal of the record reveals that the domestic enquiry conducted by the Respondents in this case is held as legal and valid vide order dated 21.1.2011.

5. The respondent has submitted written arguments u/s 11A of the Industrial Disputes Act, 1947, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written argument.

**6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-**

- I. Whether the petitioner is entitled to a declaration to set aside the impugned order of dismissal dated 20.02.2006 passed by the respondent?
- II. Whether the petitioner is entitled to the relief of reinstatement of service with continuity of service, full back wages and other consequential benefits, including attendant benefits?
- III. To what relief is the petitioner entitled?

7. **Point No.I:** In his claim statement, petitioner averred that he petitioner was appointed as Coal Filler in the respondent organization on 12.09.1994. He has discharged duties to the utmost satisfaction of all the superiors till he was illegally dismissed from the service by the respondent vide proceedings dated 10/20.02.2006, which is illegal, unjust and contrary to law and against the principles of natural justice. Further he state he had submitted his detailed explanation denying the charges and explaining the circumstance of his health conditions which forced him to keep away or be absent from his duties as he was unable to perform his duties and also send the sick certificate and gives intimation to the office, but such explanation was not taken into account, and the respondent stated that the petitioner had not submitted his explanation for the best reason known to them. It is also contended that due to the change of workplace, he developed knee and back pains and also other ortho problems for which he took treatment at the Company's hospital at Godvaari Khani and submitted Sick certificate. The absence of the petitioner from the duty was due to his ill health, and he could not perform his duty as the work is of a very hard nature.

8. On the other hand, the respondent has denied the averment made by the workman and submitted that the petitioner, by his conduct, had accepted the misconduct of unauthorized absentees as can be seen from the record, he was dismissed vide order dated 20.02.2006, and he has chosen to file the present case in June 2009, after a lapse of 3 years 5 months. Hence, the petition is barred by delay and laches on which ground alone it is liable to be dismissed. Further, it is submitted by the respondent that the petitioner was issued a chargesheet date 07.06.2006 for his absence from duty without sufficient cause on various dates during the period from 01.01.2002 to 31.12.2002 without any sanctioned leave or sufficient cause.

Company's Standing Order No. 25.25 and 25.31 reads as under:-

“25.25: Habitual late attendance or habitual absence from duty without any sufficient cause.

25.32: Absence from duty without sanctioned leave or sufficient cause for over staying beyond sanctioned leave.”

Further, the respondent has submitted the details of the number of days for which the petitioner workman was absent from duty unauthorisedly without leave or permission.

9. The perusal of the record shows that the workman was charge sheeted on 06.06.2003 for habitual absence from duty without sufficient cause or without leave or permission. The total number of absent days from 01.01.2002 up to 31.12.2002 amount to 278 days whereas he has put in only 25 attendance during the year 2002 which amounts to misconduct under the Company's Standing Order No. 25.25 and 25.31, whereas, as per the provisions of the law, a workman is required to put in 190 days of attendance in a calendar year. Moreover, the petitioner has conceded the fact alleged in the chargesheet that he was absent from duty during the said period, but he claims that due to his illness, he could not perform his duty. The perusal of Inquiry proceedings reveals that although he has stated the ground of absence is due to his illness, but despite being provided sufficient opportunity to file the evidence of illness or certificate from authorized medical hospital, he did not produce any documentary evidence to corroborate his averment. Therefore, the Inquiry Officer, did not consider reason stated by him for absence in the want of reliable evidence or medical certificate from competent sources. The Department Inquiry was conducted against the petitioner considering his absence as unauthorized absence without intimation or permission continuously during the period from 01.01.2002 to 31.12.2002, and during that period he has put up only 25 musters throughout the year 2002. The inquiry proceedings reveal that the Inquiry Officer submitted his report on 26.10.2003 and on that report, the disciplinary authority issued the show cause notice dated 29.11.2003 to the delinquent workman for extending an opportunity to him within 7 days from the date of receipt of this letter. It is also noteworthy to mention that the said show cause notice was received by the petitioner on 01.01.2003, but he did not prefer to submit his explanation within the stipulated time, i.e., 7 days. It is also noteworthy, from the perusal of the inquiry proceedings that the disciplinary authority passed the order of dismissal on 10.02.2006 against the petitioner after a gap of about three years. Thus, he waited for his reply during that period but despite the pause, petitioner did not submit any explanation. It goes to show that the petitioner has no sufficient explanation for his unauthorized absence of 278 days in the year 2002. Therefore, the respondent authority on consideration of material before it and keeping the conduct of workman and habitual of being absentee from duty proceeded to pass the Dismissal order on 15.02.2006. It is also noteworthy that the petitioner preferred the Appeal against the impugned order to the Appellate Authority and the same was rejected and the order of penalty of dismissal from the service was confirmed. Therefore, the submission of the petitioner that he was not given the opportunity of hearing during the Inquiry proceedings is not tenable.

10. Further, it is also noteworthy that since the inquiry report was submitted by the inquiry officer on 26.10.2003 and on that inquiry, the show cause notice was issued on 29.11.2003 by the Authority, but the action of dismissal was taken by the Disciplinary authority on 20.02.2006. During the period from 20.11.2003 to 20.02.2006, i.e., the date of dismissal, Disciplinary Authority provided opportunity to workman of improving the performance of attendance but the petitioner failed to improve his performance regarding attendance as the respondent has given the details of muster of the petitioner workman in his counter.

11. The respondent has also submitted that the petitioner received the show cause notice on 01.12.2003 and did not submit any representation although he submitted a mercy petition date 06.10.2005 requesting not to dismiss him from service he assured that he would improve his performance. The said application was also considered by the respondent in order to give him an opportunity to improve himself, and the performance of workman was kept under observation for 3 months after being counselled, but the petitioner did not improve his performance, and during the observation month, the month wise muster was below the standard, i.e. November 2005 10 muster, December 2005 8 musters, and January 2006, 3 musters. Therefore, it goes to show that the petitioner was a habitual absentee from the duty and his conduct was in gross contravention of the Company's Standing Orders. Respondent has also given the details of attendance of the workman from the year 1999 to 2005 which depicts as follows:-

Year	Actual Musters
1999	106 days
2000	080 days
2001	023 days
2002	025 days
2003	015 days
2004	005 days
2005(upto Aug)	Nil

Therefore, it delineates from the above chart of muster of Petitioner during seven years petitioner is a habitual absentee from his duties and sufficient opportunity has been provided to Petitioner to improve his conduct but he did not pay heed to it. The respondent counsel has cited the decision of Apex Court in **State of U.P. V. Ahok Kumar Singh 1996 (1) SCC 302, wherein the Apex Court had held:-** *"Having notices the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."*

12. In the case of **North Eastern Karnataka R.T. Corpn. v. Ashappa decided on 12 May, 2006 wherein, the Apex Court had held:-** *"Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly."*

13. In **Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574]**, the Apex Court held: *"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised."*

14. Yet recently in **State of U.P. v. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276]**, it was opined that the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating: *"It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment unless it is found to be shocking to one's conscience."*

15. By virtue of the show cause notice dated 29.10.2003, the opportunity of representing against the findings of inquiry report or proceedings has been granted to the petitioner by the disciplinary authority, but the petitioner did not avail of it. As far as the petitioner's contention is concerned that the dismissal order dated 20.02.2006 is arbitrary, unreasonable, vindictory and illegal and disproportionate to the gravity of misconduct since his absence of duty was due to his illness for which the bed rest was compulsory. Before Inquiry, he did not submit any medical certificate or any documentary evidence to prove his contention regarding the illness during the relevant period. Although, the petitioner submitted a photocopy of the certificate issued by Sri Sita Rama Nursing Home dated 04.04.2003 wherein he was advised to continue his duty from 14.04.2003 but no medical prescription of his illness from 01.01.2002 to 09.08.2002 has been submitted by him. Moreover, the said Certificate has not been proved by evidence and no reference is filed by the workman from the Company's Hospital Doctor. Petitioner has not explained the reason why he did not inform about his illness during the one year period of absence to employer and what prevented him not to inform or send a leave application to employer Respondent. Thus, the argument of illness of Petitioner is not acceptable.

16. Now let us see whether the punishment of dismissal from the service imposed against the petitioner by virtue of order dated 20.02.2006, is disproportionate to the conduct proved against the petitioner. As it can be seen from the pleading of the petitioner he averred that his absence from duty was beyond his control that was due to his illness even though sufficient opportunity has been given by the inquiry officer to produce relevant evidence to prove his contention but, the petitioner could not produce any evidence to prove his contentions. Thus, the contention of the petitioner in this regard is not acceptable. The Hon'ble Apex Court in the case of **Management Coal India Ltd. v. Mukul Kumar Choudhary Civil Appeal 5762-5763 of 2009 decided on 24.08.2009 laid down the test of proportionality of punishment and held:-** *"One of the test to be applied while dealing with the question of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration*

measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

17. When the prescribed test is applied to the facts of the present case, it withstood the said test in the circumstances of the present case, any employer would reasonably come to such conclusion of dismissal of the employee who has committed the grave misconduct of unauthorized absence from duty without leave or permission which hampered with the work in the employer's company. Furthermore, the petitioner was also provided with the opportunity to improve his muster on duty during the period of submission of the inquiry report i.e. October 2005 to February 2006, but during that period also he did not improve his muster and remained habitually absent from his duty which can be culled out from the records. Therefore, the leverage of improving his conduct was given to the petitioner but to no avail, and he continued to conduct himself in like manner. Thus, the disciplinary authority was left with no option except to pass the order of dismissal of the petitioner from employment. It cannot be said that the punishment awarded to the petitioner is vindictive in nature since no instance of any kind has been cited by the petitioner in this regard.

18. In the case of **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, the 2022 LLR page 126, wherein the Hon'ble Apex Court held:** *once the enquiry finding is held to be fair and proper, industrial Tribunal or Labour Court lacks jurisdiction to interfere with the quantum of punishment unless the same is shockingly disproportionate to the gravity of conduct*” But here, in the present case the conduct of the Petitioner was so grave and serious. That too due to his conduct of being habitual absentee the work of Respondent company suffered a lot and the Respondent was left with no option except to pass the dismissal order of the workman. Therefore, in these circumstances, the punishment of dismissal of the Petitioner/workman is commensurate to the conduct of the Petitioner.

19. In view of the discussion in the foregoing paragraph, it can be held that the impugned order need not be interfered with. Thus, the petitioner is not entitled to the declaration sought for.

Thus, Point No.I is answered accordingly.

20. **Point No.II & III:** In view of the discussion of the material on record and the finding arrived at while deciding Point No. I, the petitioner is not entitled to the declaration sought for and he is also not entitled to reinstatement into service, back wages, or continuity of service.

Thus, Point Nos. II & III are answered accordingly.

### **ORDER**

In that result, the petition is dismissed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 31<sup>st</sup> day of January, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL



नई दिल्ली, 27 फरवरी, 2023

**का.आ. 323.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सीएल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 80/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.02.2023 को प्राप्त हुआ था।

[सं. एल- 22013/01/2023-आई. आर. (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th February, 2023

**S.O. 323.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2008) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 22/02/2023

[No. L-22013/01/2023 -IR (CM-II)]

RAJENDER SINGH, Under Secy.

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD****Present:** Sri IRFAN QAMAR, Presiding OfficerDated the 30<sup>th</sup> day of January, 2023**INDUSTRIAL DISPUTE L.C.No. 80/2008****Between:**

Sri Mary Rayalingu,  
S/o Venkaty,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad .

... Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Yellandu Area, Yellandu, Khammam District.
2. The Superintendent of Mines,  
M/s. Singareni Collieries Company Ltd.,  
21 Incline, Yellandu Area,  
Yellandu, Khammam District.

... Respondents

**Appearances:**

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
For the Respondent: M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

**AWARD**

Sri Mary Rayalingu who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries

Company Ltd., seeking or declaring the proceeding No. YLD/Per/22/1837 dated 26.7.2008 issued by Respondent No.1 and consequential proceedings No.YLD/ 21 Inc/NR /2923 dated 26.7.2007 (2008) issued by the 2<sup>nd</sup> Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

**2. The averments made in the petition in brief are as follows:**

It is submitted that the Petitioner was initially appointed in the 1 Respondent's company on 9.3.1982 and later he was converted and confirmed as General Mazdoor with effect from 1.1.1986, till 26.7.2008. While so, he was issued with a charge sheet dated 17.4.2007 alleging that, he has falsely declared himself as Mary Rayalingu, S/o Venkati and got employment in the 1<sup>st</sup> Respondent company and it was also alleged that the Petitioner did not disclose the actual facts to the Employment Exchange authorities while getting registered his name. The Petitioner Thereafter, an submitted his explanation to the charge sheet denying the charges. Enquiry was conducted, wherein no witnesses were examined by the Enquiry Officer, except recording the statement of the Presenting Officer and statement of the Petitioner. Though the management relied upon documents like Ex.MI to Ex.MI6, none of the documents were either furnished or shown to the Petitioner either before or during the course of enquiry. During the enquiry, the Petitioner categorically pleaded that, he was given in adoption to Sri Mary Venkati, when he was 8 years old, consequently his name was changed and he was known as Mary Rayalingu. He got registered his name in the Employment Exchange on the same name i.e., Mary Rayalingu. He has also produced the identity cards issued to him and his wife Smt. Mary Savitramma, the secondary school certificates of his son and daughter, the decree passed in OS No.658 of 2007 to show that his name is Mary Rayalingu. The whole enquiry was conducted in a routine and mechanical manner with a predetermined intention to put the Petitioner to extreme hardship of removal from service. The procedure of enquiry was not explained to the Petitioner and he was not offered the assistance of any defence assistant. Had the procedure of enquiry was explained, he could have participated in the enquiry more effectively. As a result of the improper conduct of enquiry, Petitioner is put to great prejudice. No opportunity was given to the Petitioner to produce witnesses on his behalf. The enquiry was conducted in the language not known to the Petitioner. The findings of the Enquiry Officer are perverse, in so far as the documents produced by the Presenting Officer, and non-contradiction on the part of the Petitioner is concerned. It is submitted that Petitioner was asked to submit his explanation on the enquiry report dated 3.3.2008. Petitioner has submitted his reply on 16.3.2008/18.3.2008. Without considering the submissions made by the Petitioner, impugned proceeding dated 26.7.2008 was issued removing the Petitioner from service w.e.f. 27.7.2008. Relying upon the removal order, the 2<sup>nd</sup> Respondent issued consequential proceeding dated 26.7.2008 removing the name of the Petitioner from the rolls of the company. It is submitted that Petitioner is known as Mary Rayalingu from his childhood, he was considered for appointment consequent upon his name being sent by the employment exchange. Much prior to referring to his name to the company, the Petitioner's name was registered in the employment exchange. It is further submitted that the Petitioner is the sole breadwinner in his family, consisting of wife and children. Due to his removal from service, his whole family rendered without livelihood. Hence, it is prayed to declare the impugned order dated 26.7.2008 issued by the 1<sup>st</sup> Respondent and consequential proceedings issued by the 2<sup>nd</sup> Respondent as illegal and arbitrary and set aside the same. The Respondents be directed to reinstate the Petitioner into service with all other consequential benefits such as back wages, continuity of service and all other attendant benefits.

**3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

The Petitioner was appointed in the Respondent company and subsequently absorbed as General Mazdoor. The Petitioner was issued with a charge sheet under company's Standing Order Nos. 25.10 and 25.10a which reads as follows:

"25.10                      *-Giving of false information regarding one's name and father's name, qualification etc., in connection with his employment.*

25.10 a-                *Impersonation."*

The enquiry was conducted on different dates and finally completed on 30.12.2007. The Petitioner has not availed the opportunity of defence assistant in the enquiry. The Petitioner fully participated in the enquiry proceedings. As per his request, the Enquiry Officer explained all the stages of the enquiry proceedings in Telugu language and the Petitioner made no objection in recording enquiry proceedings in English language. The Presenting Officer has given his statement and marked 16 documents, copies of which were given to the Petitioner, and he acknowledged the receipt of all the exhibits. The Petitioner cross examined the Presenting Officer and the Presenting Officer has also cross examined the Petitioner during the course of enquiry. During cross examination the Petitioner admitted that his parents are Singanaboine Lalaiah and Yesamma. The

Petitioner stated that he himself does not know the adoption and did not follow the legal procedure and the certificate which was taken by him is in the year 2007 i.e., at time of his appointment. The statement of the Petitioner reflects that he has not informed his original name either to the Employment Exchange or to the management at the time of appointment. The Petitioner also admitted that the adoption certificate was taken on a white paper for the purpose of the suit and entered into compromise before the Principal Judicial Magistrate, Kothagudem. The original certificates issued by Gram Sarpanch reveal that his name is Singanaboine Venkatanarayana. Sri Ramachandru his brother-in-Law also stated that he married the sister of Sri Singanaboine Venkatanarayana who secured the employment as Mare Rayalingu. On 22.2.2006 the MRO on the letters of vigilance Department confirmed that the photograph of Sri Mare Rayalingu pasted for verification is as Singanaboine Venkatanarayana. The Petitioner has seen the audio and video cassette telecasted before him. The Petitioner was given full, fair and reasonable opportunity to defend his case. He has not produced any witness on his behalf. The Petitioner has affixed his signature on the proceedings after having been satisfied himself that the proceedings were recorded properly. Hence, it is clear that the enquiry has been conducted fairly and the same is legal and valid. As such, basing on the enquiry report, his services were terminated w.e.f. 27.7.2008. It is submitted that that one of the terms of appointment is that during his service in the company if it is found that he has furnished wrong information with regard to his name, surname, father's name, caste etc., his services will be terminated automatically from the Respondent company. In fact, the name of the Petitioner is Singanaboine Venkatanarayana, S/o Pedda Lalaiah, R/o Samshabad, H/o Govindapur, Nallabelli Mandal, Warangal District. The Petitioner fraudulently managed the employment exchange Authorities and got recruitment through employment exchange authorities and got employment on the name of Mari Rayalingu. In view of the above, it is prayed to dismiss the claim petition as devoid of merits.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 21.4.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim. Heard. Perused the record.

6. **In view of the above facts, the points for determination are:**

I. Whether the Petitioner/ workman was legally adopted by Sri Mary Venkati as he averred in his claim statement ?

II. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Mary Rayalingu, S/o Venkati is legal and justified?

III. If not, to what other relief he is entitled?

7. **Point No.I:** As per the claim petition, the case of the Petitioner is that, he was adopted by Sri Mary Venkati at the age of 8 years. He is known as Mary Rayalingu since long time. The burden of proof to prove the averment of the claim statement that he has been validly adopted by Sri Mary Venkati and he is known as Mary Rayalingu since the age of 8 years, is upon the claimant. But the Petitioner /workman has not produced any order of adoption obtained from any competent authority or court of law.

8. On the other hand, the Learned Counsel for the Respondent has filed written arguments, wherein he has contended that the workman/claimant has obtained the employment in Respondent company by misrepresentation and fraudulent means. His actual name is Singanaboina Venkatanarayana, but he misrepresented himself as Mary Rayalingu, S/o Mary Venkati. It is further contended that Respondent got verification Mandal Revenue Officer and it is clear from the report that the workman's real name is Singanaboina Venkatanarayana, but not Mary Rayalinghu. Thus, he has misrepresented and personified himself to be as Mary Rayalingu. It is also an offence under the criminal/penal law.

9. The Respondent has conducted the enquiry against the claimant/workman and in the enquiry he was given the hearing opportunity and the Enquiry Officer following the procedure and principles of natural justice have come to the conclusion that the workman is found to be guilty for obtaining the employment by fraudulent means and mis-representation. The domestic enquiry has been held valid and legal vide order dated 21.4.2017. Further, it is argued that the show cause notice was issued to the delinquent workman after conclusion of the enquiry and he was given the hearing opportunity. Keeping in view of the reasons and gravity of misconduct by the workman, the Disciplinary Authority opted to impose the major punishment of termination of workman Sri Mary Rayalingu from the employment. Hence, punishment imposed is justified and legal.

10. Perused the impugned order by which the workman has been terminated from employment. The Disciplinary Authority in his order has mentioned that show cause notice was issued to the workman and hearing opportunity was also given to the workman and thereafter passed the order.

11. The Hon'ble Apex Court in the **Chairman and Managing Director, Coal Indian Limited and another vs. Mukul Kumar Choudhuri & Ors., Civil Appeal Nos. 5762-5763 of 2009, decided on 24.8.2009** has held, *"One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."*

12. In **Indian Oil corporation Ltd. and another Vs. Ashok Kumar Arora dated 5.2.1997**, the Apex Court have held, *"the Enquiry Officer on appraisal of the materials before him held that the Respondent was actively involved and a brain behind procuring false medical certificates and medical bills not only for himself but for other employees and on the basis of which the reimbursement claims were made by the Respondent and other employees. The corporation sanctioned these reimbursement claims of the various employees which had resulted into monetary loss to the corporation. Before the Enquiry Officer except the Respondent other employees of the corporation admitted the charges and consequently a minor penalty was awarded to them. The Respondent contested the charges leveled against him and denied that he was instrumental in cheating or committing forgery of the medical bills. On consideration of report and findings of the Enquiry Officer, the Disciplinary Authority took a lenient view in respect of other employees. Having regard to the involvement of the Respondent in the entire episode, the Disciplinary Authority awarded him the penalty dismissal from service. The order of dismissal passed by the Disciplinary Authority against the Respondent was also affirmed by the Appellate Authority."*

13. Petitioner contended that Enquiry Officer and Disciplinary Authority proceeded with pre-conceived notion, biased. As if the Petitioner accepted the charge alleged against him which is actually incorrect. Neither the Enquiry Officer nor the Disciplinary Authority considered the submission made by the Petitioner before arriving at a conclusion. It is also contended that the Enquiry Officer relied upon the evidence of Presenting Officer who has no personal knowledge of the charge lodged against the Petitioner. Though the Enquiry Officer relied upon several documents, none of the witnesses connected with those documents were examined. It is also contended that the Enquiry Officer or the Disciplinary Authority has not considered the documents filed by the claimant and the findings of the Enquiry Officer are perverse. The enquiry officer grossly erred in considering the statements obtained during the course of preliminary enquiry to decide the guilt of the petitioner. It is to submit that, the statements obtained during the course of preliminary enquiry would become redundant, once a decision is taken to hold the regular enquiry. Therefore, unless the relevant witnesses are examined in the regular enquiry, providing due opportunity of cross examination, the statements obtained during the preliminary enquiry, cannot be relied upon. Secondly, the workman has submitted that the petitioner is the sole breadwinner in his family, consisting of wife and children. As a result of petitioner's removal from service, his whole family rendered without any livelihood. With great respect and humility petitioner humbly submits that, petitioner has not obtained employment by falsely declaring him as Mary Rayalingu. Petitioner is not gainfully employed elsewhere from the date of dismissal to till date. Petitioner and his family members have become burden to one and all, on account of his removal from service. Assuming without admitting that charge alleged against the petitioner was rightly held proved, even then, the petitioner craves indulgence of this Hon'ble Court to modify the punishment of removal, to that of any other lesser penalty, so as to survive himself and to look after his family.

14. The Petitioner could not indicate or pointed out any single instance that Enquiry Officer was perceived notion bias to him or prejudice. Further, the Petitioner himself has admitted the fact that his real name is Singanaboine Venaktanarayana, S/o Pedda Lalaiah, R/o Samshabad, H/o Govindapur, Nallabelli Mandal, Warangal District. Hence, the evidence of Presenting Officer was found sufficient to prove charge against him. Further, the Petitioner himself has put the fact of his adoption by Sri Mary Venkaty. Therefore, he has to prove his averment of adoption as this fact is matter of special knowledge of him.

15. Perused the report of Disciplinary Authority i.e., removal order wherein it is mentioned as under:

*"8. You have received the above letter and submitted your representation vide your letter 3 cited above and the same has been examined and found to be not satisfactory.*

*9. The Report of the Enquiry Officer and all connected papers have been carefully considered and I concur with the findings of the Enquiry Officer, holding you guilty of misconduct under Company's Standing orders 25.10 & 25.10 (A).*

*10. I have gone through your past record and found no extenuating circumstances to take lenient view in the matter."*

16. The workman in his claim petition has averred that he was adopted by Shri Mary Venkaty at the age of 8 years and he is known as Mary Rayalingu for a long time. As per law, the burden of proof to prove

the fact that he was legally adopted by Mary Venkaty is on the claimant to prove his averment of adoption. Even during the inquiry, the petitioner categorically pleaded that he was given in adoption to Shri Mary Venkaty when he was 11 years old and consequent upon his adoption, the adopting father changed his name to Mary Rayalingu. Since childhood, he is known as Mare Rayalingu. Further, it is contended that the petitioner registered his name in the employment exchange and he was invited to participate in the process of selection in the First Respondent Company for appointment to the post of Badli Filler. In support of his case, the petitioner also produced the identity card issued to him and his wife, Smt. Mary Savitramma. He has also produced the secondary school certificate of his son and his daughter. Apart from various other documents he has produced copy of decree passed in OS No. 658 of 2007 to show that his name is Mary Rayalingu. Petitioner submitted that without considering any of the submissions made by the Petitioner, the Inquiry Officer concluded his proceedings and submitted his report. It is also contended that no witness could be produced on behalf of Presiding Officer to substantiate the charge alleged the petitioner deposed before the Inquiry Officer and categorically pleaded that his name is Mary Rayalingu and he was adopted by Sri Mary Ventaky during the year 1960. It is also contended by the petitioner that the onus of proof is on the person who alleges but not on the charge sheeted employee. The findings of the Inquiry Officer is liable to be treated as perverse in nature, and the impugned order of removal issued by Discipline Authority based on such perverse finding is liable to be set aside. In support of his contention, the petitioner has produced a number of citations: i) **GM SCCL Ltd. Kalyankhani, Adilabad v. Mohd. Farid 2011 ALD 442** ii) **Delhi Cloth and General Mills v. Ludbud Singh AIR 1972 SC 1031** In both cases, the Hon'ble Apex Court held that when the allegation of misconduct is levelled against a person. It is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty. Similarly, other citations have also been produced. The law regarding burden of proof has been laid down by the Hon'ble Apex Court.

17. In the present matter the petitioner Mary Rayalingu who was a workman of the respondent company was issued charge sheet dated 17.04.2007 with the charge of misconduct as follows:- "a) You have falsely declared yourself as "Mary Rayalingu S/o Sri Venkaty, R/o Babu Camp, Kothagudem, Khammam District and got employment in Singareni Collieries Co. Ltd., without disclosing the facts to Employment Exchange Authorities in getting employment card on the name of Sri Mary Rayalingu S/o Sri Venkaty, through which you have got recruitment in the year 1982 as "Badli Coal Filler". b) In fact your name is "Singanaboina Venkata Narayana S/o Peda Lalaiah R/o Shamshabad, H.O. Govindapur, Nallabelly Mandal of Warangal (District). In order to get employment in SCCL., you have managed Employment Exchange Authorities and got recruitment through employment exchange in the name of Sri Mary Rayalingu, S/o Sri Venkaty."

18. In response to the alleged charge, the petitioner by filing his explanation has admitted the fact that his name was Singanaboina Venkata Narayana S/o Peda Lalaiah R/o Shamshabad, H.O. Govindapur, Nallabelly Mandal of Warangal (District), but he has put averment that he was adopted by Sri Venkaty in his childhood at the age of 8 years and since then he is known as Mary Rayalingu S/o Venkaty. During the inquiry, when the workman examined himself as a witness deposed in examination and cross-examination that he was adopted by Sri Venkaty R/o Babu Camp, Kothagudem, Khammam District. Thus the fact as alleged in the charge sheet against the petitioner that his name was Singanaboina Venkata Narayana S/o Peda Lalaiah, but he obtained the employment in the respondent company in the name of Mary Rayalingu S/o Sri Venkaty is found to be proved in view of admission made by Petitioner. This fact that he had been adopted by Sri Venkaty as his son in his childhood is within the knowledge of the petitioner and as per law, the burden of proof lies on the petitioner to prove the factum of his adoption by Sri Venkaty. Because the fact of his adoption and change of his name as well as of his father's name is within the special knowledge of Petitioner and burden to prove the fact lies on Petitioner u/s 106 of Indian Evidence Act, 1872.

19. As far as condition for valid adoption is concerned, the Hon'ble Apex Court in the case of **Ghisalal v. Dhopu Bai Civil Appeal No. 6373-6374/2 of 2002 decided on dated 12.01.2011**, have held:- "25. In support of his claim that he had been adopted by Gopalji, Ghisalal appeared in the witness box as PW-1 and examined PW-2 Omkar Lal, PW-3 Devram and PW-4 Ramniwas. He produced copy of the deed of adoption (Exhibit P-1), the plaint (Exhibit P-21) of Suit No.76A of 1964 filed by Pannalal in which he and Gopalji were impleaded as defendant Nos.1 and 2 and copies of the written statements (Exhibits P-2 and P-3) filed in that suit. He also examined PW-5 Gumbhir Singh, PW-6 Hirallal, PW-7 Ramchander Sharma, PW-8 Imdad Ali, PW-9 Moolchand, PW-10 Soorajmal and PW-11 Dhoolchand to prove these documents. According to Ghisalal, he was taken in adoption at the age of 5-6 years. He gave description of the adoption ceremonies by stating that his natural father, Kishanlal had made him to sit in the lap of Gopalji and the latter accepted him as the adopted son. In paragraph 3 of his statement, Ghisalal gave out that the adoption ceremonies were performed in village Jeeran on the road in front of the house of Gopalji and about 25 to 30 persons including PW-2 Omkar Lal, PW-3 Devram were present. Dhapubai categorically stated that Gopalji had not obtained her consent for the adoption of Ghisalal and that she had not gone to tehsil for the purpose of registry.



20. **In Civil Appeal No.8814 OF 2010, M. Vanaja Vs. M. Sarla Devi (Dead),** the Apex Court held, “A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the Act of 1956 is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The Appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the Respondent who is the adoptive [10] mother has categorically stated in her evidence that the Appellant was never adopted though she was merely brought up by her and her husband. Even the grand- mother of the Appellant who appeared before the Court as PW-3 deposed that the Appellant who lost her parents in her childhood was given to the Respondent and her husband to be brought up. PW 3 also stated in her evidence that the Appellant was not adopted by the Respondent and her husband. Therefore, the Appellant had failed to prove that she has been adopted by the Respondent and her husband Narasimhulu Naidu.”

21. However, in the present matter, the petitioner did not produce any evidence regarding his lawful adoption by Sri Venkaty and he did not aver in his claim statement regarding his adoption by Sri Venkaty. Therefore, Petitioner failed to prove his claim by producing any evidence that there was a ceremony of giving and accepting the child in adoption, was held and the consent of the mother was obtained as per provision of Section 7 of Hindu Adoption and Maintenance Act. Therefore, for in the want of legal evidence of adoption the Inquiry Officer rightly held that the Petitioner managed the Employment Exchange Authorities and got recruitment through Employment Exchange in the name of Sri Mary Rayalingu S/o Sri Venkaty and the same amounts to misconduct as per Company’s Standing Order No. 25(10) and 25(10)(a) which reads as follows:- **“25(10) Giving of false information regarding ones name, age, father’s name, qualification, etc. in connection with his employment. 25(10)(a) Impersonation.”** Thus, the aforesaid conduct as alleged in the charge sheet amounts to misconduct as per Company’s Standing Order No. 25(10) and 25(10)(a) and the same is proved during the Inquiry and consequently the punishment of removal was awarded to the workman for his misconduct.

22. The petitioner contended that he had produced various other documents in support of his claim before the Inquiry such as a decree passed in OS No. 658 of 2007 to show that his name is Mary Rayalingu, but without considering any of the submissions made by the petitioner, the Inquiry Officer concluded the proceedings and submitted his report. From the perusal of the claimed statement, it reveals that the petitioner was initially appointed in the first respondent company on 09.03.1982 and later he was converted and confirmed as General Mazdoor w.e.f. 01.01.1986, but from the perusal of the document decree, it appears that it was a compromise decree between Mary Rayalingu’s adopted son of Late Mary Venkaty (Plaintiff) and Mekala Mallesh S/o Late. Mekala Komallu. A Civil Case No. OS 658/2007 was filed by workman against Mekala Mallesh on 04.10.2007 in the Court of Principal Jr. Civil Division at Kothagudem and it got decided on 09.10.2007 within the short span of five days. It seems that this case was filed by the petitioner collusively against the defendant Mekala Mallesh in order to create the evidence of his adoption in collusion of the defendant and the same got decided between the plaintiff and the defendant as per the terms of compromise filed by both parties. In this case also, no evidence of lawful adoption was given by the workman, and no declaration of his lawful adoption was made by the court in the said OS No.658/2007 as per the provisions of law and principle laid down by the Apex Court in **Khasilal v. Dogu Bai**. Therefore, the copy of the compromise decree passed in OS No. 658/2007 does not support/prove the case of the petitioner that he was legally adopted son of Sri Mary Venkaty.

Thus, this Point No.I is decided negatively against the workman.

23. **Point No. II:** This point pertains to the question whether the action of the management of M/s Singareni Collieries Company Ltd. in imposing the punishment of dismissal from service to Sri Mary Rayalingu S/o Venkaty is legal and justified. In this regard, peruse the record, the validity of the domestic inquiry had been held as valid by the Court by order dated 21.04.2017 which remains unchallenged. From the perusal of the record, it reveals that the petitioner was given full opportunity at every stage of the proceeding which he availed and he never raised any objection complaining causing of any kind of prejudice to him. Moreover, he received all the paper/documents filed and relied upon by the respondent in support of the charge sheet. The petitioner also filed his reply and cross-examined the employer’s witnesses and also examined his witness in defence. Further, it reveals that Inquiry Officer appreciated the evidence recorded during the inquiry, and after careful scrutiny of the evidence, he has submitted his reasoned report holding the Petitioner guilty of charges levelled against him. Thus, in the opinion of this court, no case is made out to hold that domestic inquiry suffers from any procedure lapses or was conducted in violation of the principles of natural justice. Thus, the charge levelled against the workman was held proved in the domestic inquiry. Now, let us see whether the punishment inflicted upon the petitioner by passing the order of removal from the service is legal and just or disproportionate. In this regard, the Hon’ble Apex Court in the case of Management **Coal India Ltd. v. Mukul Kumar Choudhary**



**Civil Appeal 5762-5763 of 2009 decided on 24.08.2009** have held:- *“One of the test to be applied while dealing with the question of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”*

24. In the present matter, the petitioner got recruitment through Employment Exchange in the name of Mary Rayalingu S/o Sri Venkaty by falsely declaring himself as Mary Rayalingu without disclosing the fact of his real name or fact of legal adoption to the Employment Exchange and to the respondent Employers. Therefore, he committed misconduct as per Company's Standing Order No. 25(10) 25(10)(a) by impersonation and giving false information regarding his name, age, father's name and qualification in connection with employment. The conduct of the petitioner is not only misconduct under the Company's Standing Orders but also constitutes a criminal offence under the penal law. It is a matter of trust and therefore, when the Disciplinary Authority/employer loses the confidence and trust in such an employee who obtained the employment by concealing his real name and parentage, the dismissal order of such employee cannot be interfered by Appellate Authority. In like circumstances, a reasonable employer would take a harsh decision and stern action by the termination of the services of such an employee. Similarly, in the present matter, the respondent company's action in issuing the order of removal of the petitioner Sri Mary Rayalingu from the job on the basis of proven charge after conducting the fair inquiry, is just and fair. In the case of OM Kumar Vs. Union of India (2001) SCC 386 Hon'ble Apex Court have held: *“As per the settled position of Law, unless there is a procedural irregularity in conducting the disciplinary proceedings and/or the punishment imposed is shockingly disproportionate to the proved misconduct, then and then only interference with order of punishment imposed by Disciplinary Authority can be done.”*

Thus, Point No. II is decided accordingly.

25. **Point No. III:** In view of the discussion and findings given in Point Nos. I & II, it is clear that claim petition of the petitioner is unfounded and the petitioner is not entitled for declaration relief of setting aside the removal order. Hence, Petitioner is not entitled to any relief sought for.

Thus, Point No. III is answered accordingly.

### **ORDER**

The action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Mary Rayalingu, S/o Venkaty is held legal and justified and hence confirmed. The workman is not entitled to any relief. Thus, claim petition is liable to be dismissed. Hence, dismissed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30<sup>th</sup> day of January, 2023.

IRFAN QAMAR, Presiding Officer

#### Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL